



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: B&E Jackson & Associates--Reconsideration

File: B-249489.2

Date: December 7, 1992

Joseph C. Staak, Esq., Smith, Currie & Hancock, for the protester.

Katherine I. Riback, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Request for reconsideration of decision dismissing protest as untimely is denied where the protest was filed at the General Accounting Office more than 10 days after initial decision denying agency-level protest; protester's continued pursuit of protest with the agency does not toll timeliness requirements, and the fact that the protester may not have intended its initial submission to agency to constitute a protest does not change the character of a submission which clearly constituted a protest.

DECISION

B&E Jackson & Associates requests reconsideration of our July 31, 1992, dismissal of its protest of the General Services Administration's (GSA) decision to terminate discussions with Jackson under solicitation No. GS-04P-92-EXC-0021, for architect-engineering (A-E) services.

We deny the reconsideration request.

Jackson's protest to our Office followed two agency-level protests, dated June 4 and June 18, 1992. Jackson had been selected for price negotiations as the highest ranking A-E offeror. After a series of discussions during which GSA and Jackson were unable to agree on a fair and reasonable price, GSA notified Jackson that it was terminating the discussions. Jackson then sent a facsimile letter to the agency on June 4, stating that it regretted the agency's decision, averring that it had been "seriously harmed" as a result, and requesting that GSA "reconsider" its decision. The letter detailed a number of matters which "would have expedited negotiations" and explained a possible misunderstanding. On June 10, Jackson received a letter from GSA (dated June 5), denying Jackson's request that the

agency reconsider its decision. Jackson again wrote the agency on June 18 to protest the termination of negotiations. When this protest was denied on July 7, Jackson filed a protest with our Office on July 21.

We dismissed the protest as untimely because we viewed Jackson's June 4 letter to the agency as a protest and the protest to us was filed more than 10 working days after the protester received GSA's June 5 response. Our Bid Protest Regulations provide that where a protest is initially filed with a contracting activity any subsequent protest to our Office, to be considered timely, must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action," here the receipt of the agency denial letter. 4 C.F.R. § 21.2(a)(3) (1992).

In its reconsideration request, Jackson states that our decision "ignores" the fact that Jackson did not intend its June 4 letter to the agency to be an agency-level protest. Jackson contends that agency-level protests will be discouraged if any expression to the agency of dissatisfaction is determined to be a protest.

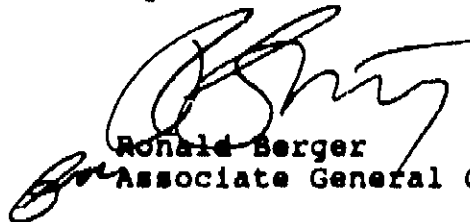
While Jackson claims that it did not intend to lodge an agency-level protest by its June 4 letter, since that letter stated that Jackson had been "seriously harmed" by the agency's decision to terminate discussions and requested that the agency "reconsider" its decision, it clearly conveyed dissatisfaction with the agency's decision and requested corrective action and, thus, constituted an initial protest. Accordingly, the 10-working day filing period began to run on June 10 when Jackson learned of the denial of the agency-level protest. Jackson's continued pursuit of the matter with the agency did not toll our timeliness requirements; once informed of the initial adverse agency position, a protester may not delay filing a subsequent protest with our Office while it continues to pursue the protest with the agency. Bauer Compressors, Inc., B-244580, July 2, 1991, 91-2 CPD ¶ 16.

We do not agree with Jackson's argument that the effect of our position is to discourage prospective contractors from seeking initial resolution of their problems with the contracting agency. On the contrary, we believe that it simply reflects our consistent position that while firms should do so, it is incumbent upon them to remain diligent in their pursuit of the matter so as not to delay the procurement process any more than absolutely necessary. Bollinger Mach. Shop & Shipyard, Inc.--Recon., B-245702.2, Jan. 15, 1992, 92-1 CPD ¶ 87. Thus, our Bid Protest Regulations clearly advise protesters that after a protest has been filed with a contracting agency, any protest to our

Office must be filed within 10 working days of "actual or constructive knowledge of initial adverse agency action."
Id.

Jackson's argument is based on the premise that even if its June 4 letter were considered a protest, we "erred" by failing to give proper consideration to Jackson's second and "complete" agency-level protest of June 18. However, the record is clear that as of its receipt of GSA's June 5 response, Jackson was on notice that the agency had denied Jackson's initial agency-level protest, and would not resume discussions. The fact that Jackson continued to pursue the matter with GSA by filing a subsequent, "complete" agency-level protest after its original protest was denied rather than file a protest with our Office, simply does not toll our timeliness requirements. Crouse-Hinds Joy Molded Prods.--Recon., B-242237.2; B-242238.2, Jan. 30, 1991, 91-1 CPD ¶ 96.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel